

811 KAR 1:105. Review and appeal.

RELATES TO: KRS 230.215, 230.260(1), (3), (7), 230.320, 230.330

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(3), 230.320(1), (2), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the Authority to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.320(1) authorizes the Authority to promulgate administrative regulations under which any license may be denied, suspended, or revoked. This administrative regulation establishes the requirements for hearings conducted by the racing judges and the Authority.

Section 1. Definition. "Judge" means a racing judge.

Section 2. Judges' Hearing. (1) In accordance with KRS 230.320(2) and (3), the judges shall have the authority to conduct an informal hearing to review any alleged violation of the provisions of KRS Chapter 230 relating to harness racing or 811 KAR Chapter 1.

(2)(a) A person charged with a violation of the provisions of KRS Chapter 230 relating to harness racing or 811 KAR Chapter 1 shall be provided with prior notice, either personally or by mail, before a judges' hearing is held concerning the violation, unless the person charged waives the notice requirement in writing. Prior notice shall not, however, be required for any routine driving or racing offense as set forth in 811 KAR 1:075.

(b) The notice shall consist of:

1. The date, time, and place of the hearing;
2. A specific designation of the particular statute or administrative regulation alleged to have been violated;
3. A clear and concise factual statement sufficient to inform each party with reasonable definiteness of the type of acts or practices alleged to be in violation of the statute or administrative regulation;
4. A statement advising the party of the right to be represented at the hearing by counsel or by a member of any racing trade association; and
5. A statement advising the party of his or her right to subpoena witnesses and documentary evidence through the Authority.

(3) A judges' hearing shall be conducted no more than thirty (30) days after service of the notice. The judges may grant a continuance of the hearing if all parties agree. The executive director and the chairman of the Authority shall be promptly notified of any continuance of a judges hearing.

(4) A judges' hearing shall be closed to the public, and the judges shall cause no public announcement to be made concerning a matter under investigation until the hearing has concluded and the party charged has been notified of the decision.

(5) The presiding judge shall conduct the hearing to ascertain and determine the substantial rights of the parties involved, and shall not be bound by technical rules of procedure and evidence.

(6) The presiding judge and at least one (1) associate judge who was serving as judge at the time of the incident in question shall be present at all times at a judges' hearing.

(7) Testimony shall be given under oath and a record shall be made of the hearing, either by use of a tape recorder or by court reporter's transcript. The party charged with the violation may, however, waive the recording and the transcription of the testimony. The judges shall not be required to receive testimony under oath in cases in which their ruling is based solely upon a review of a video tape of a race.

(8) If, at the conclusion of the hearing, the judges find that a statute or an administrative regulation has been violated, they shall within five (5) days issue a written ruling which sets forth the:

- (a) Full name of the person charged with the violation;
- (b) Identification of the person, if licensed, by license classification and address;
- (c) Statute or administrative regulation number and pertinent parts of the statute or administrative regulation violated;
- (d) Finding by the judges as to the violation of the statute or administrative regulation; and
- (e) Penalty affixed by the judges.

(9) A copy of the ruling shall be delivered to the party charged and to the Authority. A copy of the ruling shall also be posted in the racing secretary's office, and forwarded to the office of the Association of Racing Commissioners International and the United States Trotting Association.

(10) Appeal and review. A party who is the subject of any order or ruling of the judges may appeal to the Authority for a review of the judges' order or ruling.

(11) Application for review. An application to the Authority for review of the judges' order or ruling shall be made within five (5) days after a party has received notice of the order orally or in writing and shall:

- (a) Be in writing and addressed to the Authority secretary at the Authority general office;
- (b) Contain the signature of the applicant and the address to which notices may be mailed to the applicant;
- (c) Set forth the ruling requested to be reviewed and the date of the ruling;
- (d) Set forth with particularity, all factual and legal issues which the applicant believes justify review by the Authority of the judges' ruling, with specific cites to all relevant statutory provisions and administrative regulations; and
- (e) Request a hearing.

(f) The applicant for appeal may request from the Authority the Form, "Notice of Appeal," KHR Form 200-1 (8/06). Completion and filing of this form by the applicant shall satisfy the filing requirements of this section.

(12) A person charged with a violation of the provisions of KRS Chapter 230 or 811 KAR Chapter 1 may request a waiver of a judges' hearing and appeal directly to the Authority by making written request to the presiding judge within five (5) days of receipt of a notice of violation. The judges may consent to the waiver if the judges determine that waiver is in the best interest of racing. If the judges consent to the waiver, the judges shall issue a ruling and recommended penalty in accordance with the evidence available to them, and deliver it to the Authority and the person charged. If the judges refuse to grant a waiver, the judges' hearing shall be scheduled and shall proceed pursuant to subsection (3) of this section.

Section 3. Authority Hearing on Appeal from Judges' Hearing. (1) A hearing by the Authority of an appeal from a judges' ruling pursuant to Section 2(10) of this administrative regulation shall be conducted in accordance with KRS Chapter 13B.

(2) A hearing by the Authority on appeal from a judges' ruling shall be held within sixty (60) days of the filing of the appeal. A continuance of thirty (30) additional days may be granted for good cause shown.

Section 4. Frivolous Appeal. (1) The Authority may determine that an appeal to the Authority from a judges' ruling or an appeal to the Authority by means of waiver of the judges' hearing pursuant to Section 2(12) of this administrative regulation, is a frivolous appeal. An appeal shall be presumed to be frivolous if:

- (a) The applicant applies for an appeal to the Authority but fails without good cause to appear at the KRS Chapter 13B hearing before the Authority's hearing officer; or

(b) The applicant appears at the KRS Chapter 13B hearing but fails without good cause to offer evidence at the hearing to support his application for review.

(2) If the Authority finds that an appeal is frivolous, this fact shall be considered an aggravating circumstance and may be considered in assessing any penalty pursuant to 811 KAR 1:095.

Section 5. Authority Hearing Initiated by the Authority (1) If the Authority is of the opinion that an association, licensee or other person has violated a provision of 811 KAR Chapter 1 or a provision of KRS Chapter 230 relating to harness racing, it shall have the authority to issue a citation against that association, licensee or other person directing him to appear and show cause why his license should not be immediately suspended or revoked or why he should not be expelled from licensed facilities or otherwise penalized in accordance with 811 KAR Chapter 1.

(2) The citation shall contain the notice prescribed in KRS Chapter 13B.050, and the show cause hearing shall be conducted in accordance with KRS Chapter 13B.

Section 6. Stay of Enforcement. A stay of enforcement of the imposition of a judges' decision shall be governed by KRS 230.320(2).

Section 7. Incorporation by Reference. (1) "Notice of Appeal", Form 200-1, (8/06), is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the Kentucky Horse Racing Authority, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Kentucky Horse Racing Authority Web site www.khra.ky.gov. (KTC 1-8 (Rule 24); 1 Ky.R. 1115; eff. 6-11-75; Am. 7 Ky.R. 927; eff. 7-1-81; 10 Ky.R. 1009; eff. 3-31-84; 11 Ky.R. 457; eff. 10-9-84; 14 Ky.R. 628; eff. 11-6-87; 16 Ky.R. 1701; 2138; eff. 4-12-90; 28 Ky.R. 2256; 29 Ky.R. 440; eff. 8-12-2002; 33 Ky.R. 969; 2964; eff. 4-6-07.)